

BEFORE THE
STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Order to
Remove an Outdoor Advertising Sign
Owned or Controlled by Dean Lee,
Located on the East Side of USH 51,
Town of Knowlton, Marathon County.

Case No. 96-H-963

FINAL DECISION

On February 28, 1996, the Department of Transportation sent notice to Dean Lee requiring the removal of a sign which had been erected without a permit. By letter dated April 29, 1996, Mr. Lee requested a hearing to review the removal order. By letter dated May 9, 1996, the Department of Transportation referred the request to the Division of Hearings and Appeals for hearing. Pursuant to due notice, a hearing was held in Wisconsin Rapids, Wisconsin, on July 31, 1996, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to the proceedings are certified as follows:

Dean Lee
Lee's State Stop Restaurant
450 Airport Plaza
Mosinee, WI 54455

Wisconsin Department of Transportation, by
Attorney Barbara F. Bird
P.O. Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision on September 13, 1996. No comments on the proposed decision were filed. The proposed decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

1. Dean Lee operates Lee's Stage Stop, Inc., a restaurant, in Mosinee, Wisconsin. Mr. Lee has contracted with Albert Schwichtenberg to store equipment on his property.

Mr. Schwichtenberg's property is located along United States Highway 51 (USH 51) south of Locker Road in Marathon County.

2. Among the equipment Mr. Lee stores on the Schwichtenberg property is an antique wooden wagon. Mr. Lee "stores" this wagon along the northbound lanes of USH 51 approximately 100 feet from the center line of USH 51. Attached to the left side of the wagon are two boards. On the boards the message "Stage Stop - Next Exit" is painted. The wagon and message are visible from the northbound lanes of USH 51.
3. United States Highway 51 is a federal aid primary highway. The stretch of USH 51 along which Mr. Lee stores his wagon has also been designated Interstate 39.
4. The Department of Transportation (Department) considers the message painted on the side of the wagon an outdoor advertising sign. No sign permit for the wagon has been applied for or issued. The Department has issued two removal orders for the structure. The most recent removal order was issued on February 28, 1996. This removal order is the subject of the instant hearing.
5. Mr. Lee contends that the structure is not a sign as the word is defined at sec. 84.30(2)(j), Stats. He argues that the wagon is not a permanent or erected structure. Mr. Lee provided undisputed testimony that the wagon is removed from the field three or four times per year. It is used for such things as parades.

"Sign" is defined at sec. 84.30(2)(j), Stats., as "any outdoor advertising sign, display, device, notice, figure, painting, drawing, message, placard, poster, billboard, or other thing, which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of any portion of an interstate highway or primary highway."

The wagon with the message painted on its side is a "sign" when parked along the side of USH 51. The message is intended to advertise Lee's Stage Stop restaurant and to inform motorists where to turn to drive to the restaurant. If the wagon was parked at another location, the message would not be meaningful. Mr. Lee argues that the wagon is not a sign because it is not permanent. Permanency is not an element of the definition of sign. The wagon and message constitutes a sign when parked along USH 51.

6. The land where the sign is located is not a business area within the definition of "business area" at sec. 84.30(2)(b), Stats. The area is zoned agricultural. Because

the sign is not located in a business area it is not eligible for a sign permit pursuant to sec. Trans 201.07, Wis. Adm. Code.

Conclusions of Law

The Administrator concludes:

1. The wagon with the message "Stage Stop - Next Exit" constitutes a sign pursuant to the definition at sec. 84.30(2)(j), Stats.
2. The area where the sign is presently located is not a business area within the definition of business area at sec. 84.30(2)(b), Stats., therefore, the sign is not eligible for a permit at its present location.
3. Pursuant to secs. 84.30(18) and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

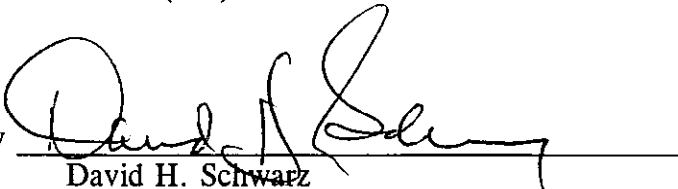
The Administrator orders:

The removal order for the subject sign issued on February 28, 1996, is affirmed.

Dated at Madison, Wisconsin on October 9, 1996.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 267-2744

By



David H. Schwarz
Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Division. This notice is provided to insure compliance with §227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to §227.49, Stats. Rehearing may only be granted for those reasons set out in §227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under §§227.52 and 227.53, Stats.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of §§227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of §§227.52 and 227.53, Stats., to insure strict compliance with all its requirements.

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PROPOSED DECISION

On February 28, 1996, the Department of Transportation sent notice to Dean Lee requiring the removal of a sign which had been erected without a permit. By letter dated April 29, 1996, Mr. Lee requested a hearing to review the removal order. By letter dated May 9, 1996, the Department of Transportation referred the request to the Division of Hearings and Appeals for hearing. Pursuant to due notice, a hearing was held in Wisconsin Rapids, Wisconsin, on July 31, 1996, before Mark J. Kaiser, Administrative Law Judge.

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Wisconsin Department of Transportation, by
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Proposed Findings of Fact

1. Dean Lee operates Lee's Stage Stop, Inc., a restaurant, in Mosinee, Wisconsin. Mr. Lee has contracted with Albert Schwichtenberg to store equipment on his property. Mr. Schwichtenberg's property is located along United States Highway 51 (USH 51) south of Locker Road in Marathon County.
2. Among the equipment Mr. Lee stores on the Schwichtenberg property is an antique wooden wagon. Mr. Lee "stores" this wagon along the northbound lanes of USH 51

approximately 100 feet from the center line of USH 51. Attached to the left side of the wagon are two boards. On the boards the message "Stage Stop - Next Exit" is painted. The wagon and message are visible from the northbound lanes of USH 51.

3. As of October 27, 1996, the stretch of USH 51 along which Mr. Lee stores his wagon was redesignated Interstate 39 (I-39). Prior to that date, USH was a federal-aid primary highway.
4. The Department of Transportation (Department) considers the message painted on the side of the wagon an outdoor advertising sign. No sign permit for the wagon has been applied for or issued. The Department has issued two removal orders for the structure. The most recent removal order was issued on February 28, 1996. This removal order is the subject of the instant hearing.
5. Mr. Lee contends that the structure is not a sign as the word is defined at sec. 84.30(2)(j), Stats. He argues that the wagon is not a permanent or erected structure. Mr. Lee provided undisputed testimony that the wagon is removed from the field three or four times per year. It is used for such things as parades.

"Sign" is defined at sec. 84.30(2)(j), Stats., as "any outdoor advertising sign, display, device, notice, figure, painting, drawing, message, placard, poster, billboard, or other thing, which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of any portion of an interstate highway or primary highway."

The wagon with the message painted on its side is a "sign" when parked along the side of Highway 51. The message is intended to advertise Lee's Stage Stop restaurant and is intended to inform motorists where to turn to drive to the restaurant. If the wagon was parked at another location, the message would not be meaningful. Mr. Lee argues that the wagon is not a sign because it is not permanent. Permanency is not an element of the definition of sign. The wagon and message constitutes a sign when parked along I-39.

6. The land where the sign is located is not a business area within the definition of "business area" at sec. 84.30(2)(b), Stats. The area is zoned agricultural. Because the sign is not located in a business area it is not eligible for a sign permit pursuant to sec. Trans 201.07, Wis. Adm. Code.

Proposed Conclusions of Law

1. The wagon with the message "Stage Stop - Next Exit" constitute a sign pursuant to the definition at sec. 84.30(2)(j), Stats.
2. The area where the sign is presently located is not a business area within the definition of business area at sec. 84.30(2)(b), Stats., therefore, the sign is not eligible for a permit at its present location.
3. Pursuant to secs. 84.30(18) and 227.43(1)(bg), Stats., the Division of Hearing and Appeals has the authority to issue the following order.

Proposed Order

The removal order for the subject sign issued on February 28, 1996, is affirmed.

Dated at Madison, Wisconsin on September 13, 1996.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By Mark J. Kaiser
Mark J. Kaiser
Administrative Law Judge